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CHRISTMANN ENERGY CORP.

IBLA 87-100 Decided February 14, 1989

Appeal from a decision of the Acting Director, Minerals Management Service, affirming a decision of the Royalty Compliance Division, assessing late payment interest charges for underpayment of royalties due on Federal oil and gas lease 49-022083.

Affirmed.

1. Oil and Gas Leases: Royalties -- Payments: Generally

Late payment interest charges are properly assessed against payments of royalty made in February and March 1983 for gas produced and removed from a Federal lease from June 1981 through January 1983.

APPEARANCES: W. Chris Boyer, Esq., Lubbock, Texas, for appellant; Peter J. Schaumberg, Esq., Geoffrey Heath, Esq., Howard Chalker, Esq., and L. Poe Leggette, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Christmann Energy Corporation (Christmann) appeals from a decision of the Acting Director, Minerals Management Service (MMS), dated June 30, 1986 (MMS-86-0059-O&G), affirming a decision of the Royalty Compliance Division assessing late payment interest charges of $21,227.51 for the underpayment of royalties due on natural gas produced from Federal oil and gas lease 49-022083, located in Sweetwater County, Wyoming. Although Christmann was a 50-percent working-interest owner in the lease with Eason Oil Company, Christmann, as the operator, was entirely responsible for payment of royalties from production.

In June 1981, production commenced from the lease. The gas was delivered to two companies, Northwestern Pipeline Company and Colorado Interstate Gas (CIG). CIG received 25 percent of the gas produced from the lease. Gas from the lease qualified for pricing under section 107 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. § 3317 (1982), as implemented by 18 CFR

271.703. This price for "high cost natural gas" is substantially above t the price which would otherwise be paid, referred to by appellant as "section 103" (15 U.S.C. § 3313 (1982)) gas.

According to Christmann, gas was delivered to CIG from June to December 1981 without a written contract (Statement of Reasons (SOR) at 1, 2). In December 1981 a contract was signed, but CIG refused to pay the high cost rate allowed under section 107 for gas produced prior to signing the contract, and offered to pay the lower section 103 rate instead. While this dispute over the effective date of the contract between CIG and Christmann lasted, CIG refused to make any payments. In February 1983, the dispute was settled, and CIG then paid for all the gas delivered from June 1981 through January 1983 at the higher section 107 rate. Christmann then paid the royalties on the gas in two payments: $73,320.24 on February 17, 1983, and $77,022.72 on March 14, 1983.

These payments were determined to be late in an audit conducted by the Wyoming State Auditor's Office in accordance with section 205 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. § 1735(b) (1982). 1/ Christmann objected, contending that royalties were paid after payment was received from CIG and the interest should be billed to CIG because CIG, not Christmann, had delayed payment for the gas.

On December 31, 1985, the Chief, Royalty Compliance Division, MMS, directed Christmann to pay $21,227.51 of late interest charges to MMS in order to bring the lease into compliance with 30 CFR 218.54 and 218.102. Christmann appealed this determination to the Director, MMS, who denied the appeal on June 30, 1986, concluding: "The interest demanded by the lessor was properly computed."

The Director held that Christmann was required to make timely royalty payments pursuant to the language of its lease, Departmental regulations in effect both before and after the implementation of FOGRMA, and provisions of NTL-1. He found the dispute between Christmann and CIG did not justify deferral of the due date for royalty payment, explaining:

> If CIG had never paid for the production, the Appellant would, nevertheless, have been liable for a royalty payment based upon the value of the production.
>
> The Appellant, as payor, has the duty to ensure that timely royalty payments are made on the full value of the production attributable to a lease. If the Appellant has a problem with the

1/ MMS memorandum dated Mar. 19, 1986, regarding Field Report on Appeal of Bill for Collection of Interest Assessments on Late Payment of Royalties, Christmann Energy Corporation, Attachment 1.

> conduct of third parties with which it deals that in turn affects its payment of royalties to the lessor, it is the responsibility of the Appellant, and not the Government, to resolve that problem.
>
> The Appellant's equitable argument that the underpayments referred to herein are not intentional or willful is irrelevant. No penalty is involved in the assessment of interest; the Government simply seeks to recover the time value of those funds to which it is entitled. Nor does it matter that the funds in question may have been in the possession of a third party rather than the possession of the Appellant during this period. The problems that the Appellant experiences in its commercial relations are not a burden which can be transferred to the Government, nor are they grounds for disregarding the clear language of the lease and the regulations or the express provisions of NTL-1.

(Decision at 4, 5).

On appeal to this Board Christmann contends the authorities relied upon by MMS to assess late payment charges do not apply to the alleged violation, and that MMS has incorrectly determined the "due" date of the royalty payments in question. Christmann argues that the MMS decision fails to consider important equities and is inconsistent with the intent and purpose of FOGRMA (SOR at 5, 6).

The current regulation dealing with payment of royalties for oil and gas leases, 30 CFR 218.50(a), provides that "[r]oyalty payments are due at the end of the month following the month during which the oil and gas is produced and sold except when the last day of the month falls on a weekend or holiday." For onshore oil and gas royalty payments, 30 CFR 218.102 provides that "failure to make timely or proper payments of any monies due pursuant to leases, permits, and contracts subject to these regulations will result in the collection by the MMS of the full amount past due plus a late payment charge." A prior regulation, 30 CFR 221.80 (1981), in effect since December 1980, was to the same effect. 2/

Section 111(a) of FOGRMA, 30 U.S.C. § 1721(a) (1982), provides, for oil and gas leases, that "where royalty payments are not received * * * on the date that such payments are due, or are less than the amount due, the Secretary shall charge interest on such late payments or underpayments." Under 30 CFR 218.54, which implements this provision governing late payments and underpayment, an interest charge must be assessed by MMS from the date payments are due.

[1] We find that MMS correctly assessed interest charges for late payment of royalties where payment for production occurring from June 1981 to January 1983 was not made until February and March 1983. Although most of this time passed prior to enactment of FOGRMA, Departmental regulation

2/ 30 CFR 221.80, 45 FR 84762 (Dec. 23, 1980), redesignated 30 CFR 218.102, 48 FR 35639 (Aug. 5, 1983).

30 CFR 221.80, in effect during the entire time of the production in question, required payment of interest on payments received after payment was due. Dugan Production Corp., 107 IBLA 91 (1989); Cities Service Oil & Gas Corp., 104 IBLA 291 (1988). The authority of the Department, prior to FOGRMA, to charge interest for late payment is well established. Sun Oil Co., 91 IBLA 1, 93 I.D. 95 (1986); Peabody Coal Co., 72 IBLA 337 (1983); Atlantic Richfield Co., 21 IBLA 98, 82 I.D. 316 (1975).

Christmann argues that royalties were not due until the last day of the month following the month during which the gas was produced and sold. It maintains that no sale existed until CIG finally paid for the gas after the dispute over price was settled. However, it does not deny that section 2(d)(c) of the lease which governs the payment of royalties provides:

> The lessee agrees * * * [t]o pay rentals and royalties in amounts of value of production removed or sold from the leased lands as follows: * * * to pay the lessor 12 1/2 percent royalty on the production removed or sold from the leased land computed in accordance with the Oil and Gas Operating Regulations (30 CFR 221). * * * When paid in value, such royalties on production shall be due and payable monthly on the last day of the calendar month next following the calendar month in which produced.

These lease provisions establish that royalty payment is due monthly after production is removed from the lease. There is no provision allowing for deferment of payment on account of disputes with purchasers which cause delay in payment to the Federal lessee. A similar argument to that made by Christmann was rejected in Cities Service Oil & Gas Corp., supra, where we concluded:

> The Board has repeatedly recognized that the imposition of late payment charges is appropriate to compensate for the loss of use of funds due but not paid. Amoco Production Co., 78 IBLA 93, 100 (1983). See also Cypress Western Coal Co., 103 IBLA 218 (1988), and Peabody Coal Co., 72 IBLA 337, 348 (1983), where the Board upheld the imposition of late charges on coal leases under similar regulations. Appellant's arguments on appeal do not persuade us that either Congress or the MMS intended that, when royalty amounts owing are not paid pending resolution of a dispute between a lessor and the purchaser of the product, an interest assessment should not be imposed pursuant to 30 CFR 218.54(a).

Id. at 295. See also Dugan Production Corp., 107 IBLA at 94. The arguments advanced in support of this appeal, which seek to avoid responsibility because of Christmann's dispute with CIG, cannot be distinguished from similar arguments rejected by our decisions in Cities Service, supra, and Dugan Production Corp., supra. Interest was properly charged, therefore, for payments made more than 3 months after the end of the month when production and removal of gas from the lease took place. Yates Petroleum Corp., 104 IBLA 173 (1988).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge.